

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA**

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| Melissa Smith,                                   | ) |                                |
|  | ) |                                |
| Plaintiff,                                       | ) | Civil Action No. 5:19-2339-RMG |
|  | ) |                                |
| vs.  | ) |                                |
|  | ) |                                |
| Andrew Saul, Commissioner<br>of Social Security, | ) |                                |
|  | ) | <b>ORDER</b>                   |
|  | ) |                                |
| Defendant.                                       | ) |                                |
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This matter comes before the Court for judicial review of the final decision of the Commissioner of Social Security denying Plaintiff’s application for Disability Insurance Benefits (“DIB”). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge for pretrial handling. The Magistrate Judge issued a Report and Recommendation (“R & R”) on September 29, 2020, recommending that the decision of the Commissioner be reversed and remanded to the agency because the Administrative Law Judge (“ALJ”) failed to adequately address Plaintiff’s moderate limitations on concentration, persistence, and patience and ability to interact with others. (Dkt. No. 21 at 17-20). The Commissioner has advised the Court that he does not intend to file objections to the R & R. (Dkt. No. 23).

This is not the first time this matter has come before this Court and has had a long and troubled administrative processing history within the Social Security Administration dating from 2013. There have been three ALJ decisions in this matter, with the ALJ for the first two decisions being removed by the Appeals Council prior to the third ALJ decision.

In an order dated February 8, 2017, this Court identified deficiencies in the ALJ's decision, including whether proper weight was given to the Plaintiff's 100% VA disability rating and to the opinions of Plaintiff's multiple treating health care providers who opined that she had mental and physical impairments that, if true, almost certainly rendered her disabled under the Social Security Act. (C.A. No. 5:15-4195). The most recent ALJ decision gives "little weight" to the opinions of Plaintiff's treating psychiatrist, Dr. Georgia Huff; her treating primary care physician, Dr. Shelia Roundtree; a treating mental health therapist, James Capobianco, LMSW; a consulting psychologist, Dr. James Ruffing (who provided a 2013 report and an updated 2018 report); and a consulting orthopaedic surgeon, Dr. Melanie Johnson-Bailey. The ALJ was also dismissive of the VA's finding of 100% disability. A review of the record raises a substantial question of whether the ALJ is substituting her medical opinion for that of these treating, examining and specialist physicians, particularly regarding Plaintiff's capacity to function in a competitive workplace eight hours a day vs. her ability to maintain stability with her PTSD and orthopaedic impairments while living alone and isolated primarily at home. On remand, the Commissioner is directed to address the remarkably consistent opinions of these multiple treating and consulting healthcare providers and whether periodic medical documentation of Plaintiff's relatively stable condition while living in isolation is actually inconsistent with the opinions by these providers that Plaintiff cannot likely function in the competitive workplace due to her mental and physical impairments. This review must, of course, be conducted in light of the deferential standards set forth in the Treating Physician Rule, 20 C.F.R. Section 404.1527(c).

The Court **ADOPTS** the Report and Recommendation as the order of this Court, **REVERSES** the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g),

and **REMANDS** the matter to the Commissioner for further proceedings consistent with this order. Since this application for disability benefits has been pending for over *seven* years, the Court directs that an administrative hearing, if required, be conducted in this matter within 120 days of this Order, a decision by the ALJ be issued within 150 days of this Order, and a final agency decision within 210 days of this Order.

**AND IT IS SO ORDERED.**

S/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

Charleston, South Carolina  
October 14, 2020